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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/821,846	04/12/2004	Laurent Bloch	104708	1738
38598	7590	12/29/2005	EXAMINER	
ANDREWS KURTH LLP 1350 I STREET, N.W. SUITE 1100 WASHINGTON, DC 20005			BEAULIEU, YONEL	
			ART UNIT	PAPER NUMBER
			3661	

DATE MAILED: 12/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/821,846	Applicant(s) BLOCH ET AL.	
	Examiner Yonel Beaulieu	Art Unit 3661	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12 April 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>4/22/04</u> . | 6) <input type="checkbox"/> Other: _____  |

***Specification***

It is suggested to update the status of the incomplete U.S. Application Serial Number on top of page 1.

***Claim Objections***

Claim 22 is objected to because of the following informalities: it is suggested to change "an" (line 2) to - a- -. Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 – 8, 10, 11, 13, 14, 19 – 30, and 32 - 35 are rejected under 35 U.S.C. 102(b) as being anticipated by Brinkley et al. (US 2003/0003872 A1).

Regarding claims 1, 2, 19 - 22, and 28, Brinkley et al. teaches remote communication and interfacing with flight performance data on an aircraft by way of an ACMS plug (¶¶0028, 0029, 0064, 0067, and 0070) comprising a CPU (40; fig. 2) providing processing power and wireless transmission functionality (¶¶ 0033-0037); a wireless interface (34) controlled by CPU 40 and connecting to a wireless network (¶¶ 0030 and 0040); a memory (42) coupled to the CPU 40 (see fig. 2) for storing

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performance data (¶¶0031 and 0034 at least); wherein the CPU transmits the stored data after a monitored report (scheduled data) is generated (¶0036); an Ethernet interface (56) connecting to a wired network to transmit the data to ground station 12 (¶¶0057 and 0058 at least).

Regarding claims 3 and 24, Brinkley's teaching supports a database for storing network attributes for different airports (¶¶0029 and 0048 at least).

Regarding claims 4 and 25, Brinkley further teaches basic transmission control protocol information (¶¶ 0014, 0041, and 0057).

Regarding claims 5 and 26, Brinkley's teaching is controlled by software (¶¶0014, 0031, and 0032).

Regarding claims 6 and 27, Brinkley further teaches a bus connecting the CPU and the ACMS (¶¶0031-0033).

Regarding claims 7 and 29, Brinkley further teaches erasing (deleting) data from the memory after transmission (¶0060 at least).

Regarding claims 8, 10, and 30, Brinkley further teaches securing access to the flight performance data (data in Brinkley are authenticated; ¶¶0039 and 0062).

Regarding claims 10, 11, 13, 14, 23, 32, 33, and 35, aside from the wired network and the authentication protocol, Brinkley further teaches the network being a wireless-fidelity 802.11b network (note blocks 32 and 36 in fig. 2; ¶¶0028, 0030, 0050 at least).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 9, 12, and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brinkley et al. ('3872 A1) as applied to claims 1 and 20.

As discussed above, Brinkley teaches all of the limitations except for the explicit recitation of encrypting the data during transmission.

However, Brinkley does teach data authentication which suggests the data were previously encrypted during transmission. It would have been obvious to one of ordinary skill in the art at the time of the invention Brinkley is at least fully functionally equivalent to the claimed invention because Brinkley teaches all of the structural necessary features that would otherwise provide for the encryption as claimed in order to enhance security.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

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Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1, 7 – 20, 23, 30 - 36 provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 24 and 26 - 34 of copending Application No. 10/821,845. Although the conflicting claims are not identical, they are not patentably distinct from each other because the same structural features are recited in order to achieve the same end result of remotely communicating with an ACMS on an aircraft.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yonel Beaulieu whose telephone number is (571) 272-6955. The examiner can normally be reached on M-W 9-3; F 9-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas BLACK can be reached on (571) 272-6956. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Lionel Beaulieu  
Primary Examiner  
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